Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 610.

JAMES A. BRIGGS, EXECUTOR OF CHARLES M. BRIGGS, DECEASED, *Plaintiff in Error,*

vs

AMANDA M. WALKER, AND OHIO VALLEY BANKING & TRUST COMPANY, ADMINISTRATOR OF THE ESTATE OF A. L. SHOTWELL, DEC'D. *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR ON MOTION TO DISMISS OR AFFIRM.

STATEMENT.

On April 18, 1862, C. S. Morehead gave to his nephew. Charles M. Briggs, a bill of sale for quite a large amount of cotton in Mississippi in the following terms (Rec., p. 25), to-wit:

"For and in consideration of money loaned and advanced heretofore by C. M. Briggs, and further valuable consideration by way of suretyship for me by said Briggs, I hereby sell and transfer to said C. M. Briggs all of the cotton on my two plantations in Mississippi near Eggs Point and Greenville. Said cotton, so sold, embraces all that I have, baled and unbaled, gathered and ungathered. This is intended to cover all cotton that I have now or may have this year on said two plantations, supposed to be 2,000 bales.

"April 18, 1862. C. S. MOREHEAD."

Contemporaneously with the execution of this bill of sale, and as a part of the consideration for it, Briggs executed to Samuel J. Walker (a son-in-law and creditor of Morehead) the following instrument (Rec. p. 5), to wit:

"In consideration of the sale and transfer this day made to me by C. S. Morehead of all the cotton on his two plantations near Eggs Point in the State of Mississippi as specified in said sale and transfer in writing, *I hereby assume and agree to pay to Samuel J. Walker the sum of forty thousand dollars due and owing to said Walker, by C. S. Morehead*, upon condition however that I realize sufficient amount from any cotton on or from said plantations *or proceeds of same*, together with about twenty-five thousand dollars due me from said C. S. Morehead for moneys advanced and liability for him as surety, *also about ten thousand dollars more or less, being a claim of A. L. Shotwell*, as he may hereafter establish against said C. S. Morehead, *but in case I should not realize sufficient to pay all of said claims or amounts above named in full, then I am to pay or divide the amount that may be realized from said cotton proportionately or pro rata according to the respective amounts named to the parties above named*; first however paying and refunding any moneys paid by the respective parties for or on account of expenses pertaining to same, and in case more should be realized than sufficient to pay said amounts with interest thereon, to the time of realization and payment, then any surplus to be divided, one-half to said Shotwell and C. M. Briggs jointly for any services, and the remaining one-half to said Samuel J. Walker, but no other consideration to be paid to said Shotwell and Briggs for their service.

C. M. BRIGGS.

April 18th, 1862."

(Our italics).

Walker subsequently assigned this writing to his wife, the present defendant in error, Amanda M. Walker, who is now his widow, said Samuel J. Walker being long since dead. And A. L. Shotwell being now dead, the Ohio Valley Banking & Trust Company is now administrator of his estate.

After the transfer of this cotton to Briggs by Morehead, it was seized by the United States authorities during the war; and was subsequently sold, and the proceeds of sale paid into the Treasury of the United States. After the war, Briggs, who was a loyal citizen, presented a claim against the Government for the proceeds of sale of his cotton. He employed counsel and agreed to give them one-half of what they should recover. The claim ran the usual course of such claims against the Government. It dragged along for many, many years. In the meantime Briggs died in 1875, and the executor of his will, James A. Briggs, present plaintiff in error, took up the prosecution of the claim, leaving the matter, however, in the hands of the same attorneys as those employed by the testator.

In 1888 an act of Congress was passed giving the Court of Claims jurisdiction to hear and determine the claim for the proceeds of sale of this cotton, which act was in the following words:

"Be it enacted, etc. That the Court of Claims is hereby given, subject to the proviso hereinafter mentioned, like jurisdiction to hear and determine the claim of the legal representatives of C. M. Briggs, deceased, *for the proceeds of four hundred and fifty-five bales of cotton*, now in the Treasury of the United States, alleged to have been owned, in whole or part, by said Briggs, as is given to said court by the acts of March twelfth, eighteen hundred and sixty-three, and July second, eighteen hundred and sixty-four, upon petition to be filed in said court at any time within two years from the passage of this act, any statute of limitations to the contrary notwithstanding:

"Provided, however, that unless the said court shall, on a preliminary inquiry, find that said Briggs was in fact loyal to the United States Government, and that the assignment to him hereinafter mentioned was *bona fide*, the court shall not have jurisdiction of the case, and the same shall, without further proceedings be dismissed.

"And provided further, that if the court shall find that the alleged assignment from one Morehead to said Briggs of date April 18th, eighteen hundred and sixty-two, under which said Briggs claimed said cotton, was intended only as security to said Briggs for indebtedness, and against contingent liabilities assumed by him for said Morehead, judgment shall be rendered for *such portion of the proceeds of said cotton* as will satisfy the debts and claims of said Briggs, to secure which said assignment was given:

"Provided, *said judgment shall not be paid out of the general fund* in the Treasury arising from the sale of captured and abandoned property, *but shall be paid out of the special fund charged to and accounted for by Captain G. L. Fort, assistant quartermaster at Memphis, arising from the sale of the two thousand two hundred and nine bales of cotton received by him, with which claimant's cotton was intermingled*, said claimant to receive only the proportion which his cotton bears to the net proceeds accounted for by said Fort." (Our italics. Rec. p. 25.)

The final result of the litigation before the Court of Claims was that Briggs' executor recovered a judgment for $88,000, which was paid in March, 1894, and of which one-half, to-wit, $44,000, went to the attorneys; and the remaining sum of $44,000 is now in the hands of the executor, plaintiff in error.

Promptly after the collection of the money, to wit, on April 7th, 1894, Mrs. Walker made her demand upon the executor for the payment of the amount due to her, under the contract between Walker and Briggs of April 18th, 1862.

Subsequent to this demand, Briggs, the executor, in the suit of McLemore vs. Briggs, in the Louisville Chancery Court, in which he had been from time to time settling his accounts as executor, (being a suit for a settlement of the estate of Chas. M. Briggs), filed a supplemental answer and cross-petition, in which he alleged

that "since the last settlement of his accounts herein he has succeeded in collecting from the United States Government *the cotton claim* referred to in his previous settlements herein;" and in which pleading he further stated that Mrs. Walker, and the administrator of Shotwell, were asserting some claims against the same, and in which he asked that they be made parties defendant to that action, and required to assert their claims therein. (Rec. p. 2).

The separate answers and counter-claims of Mrs. Walker and of Shotwell's administrator were filed pursuant to this invitation, *being based solely on the agreement of April 18th, 1862*, between Briggs and Walker, and saying that the money had been paid Brigg's executor by the United States on account of this cotton claim, but *making no reference whatever to the act of Congress heretofore mentioned.* (Rec. p. 2.)

To these counter-claims the executor first filed answers, each of which was simply a traverse, denying knowledge or information sufficient to form a belief as to the allegations of the pleadings asserting the execution of the instruments relied on, and the existence of the indebtedness asserted. (Rec. 7 & 20.) It is not claimed that any Federal question was presented by the issues thus made.

Subsequently, however, the executor filed an amended answer to each of the claims; and it is out of this amendment that a Federal question is claimed to arise.

In this pleading the executor sets up the act of Congress heretofore referred to, and says that by this act, as well as by the judgment of the Court of Claims thereunder, he was limited in his recovery to such sum as would satisfy the debts and claims from *Morehead* to *Briggs*, to secure which the bill of sale was given; and that he, as the executor of Briggs, only received and recovered from the United States such sum as was owing directly to his testator from Morehead, and did not recover anything whatever on account of anything that might have been due from Morehead to either Samuel J. Walker or A. L. Shotwell. He further alleged that the passage of this act of Congress was an *act of grace*, on the part of the United States, solely for the benefit of Briggs, to permit a claim to be asserted against the proceeds of the cotton heretofore mentioned, to the extent that Morehead was indebted to Briggs; and that long prior thereto the claim for any part of the proceeds of the said cotton had been *barred by limitation;* and that the act was solely for the benefit of Briggs, and not for the benefit of any one else, directly or indirectly.

He then further stated quite at length that, while the proceedings were pending before the Court of Claims, Walker and Shotwell had testified in favor of Briggs to the effect that the bill of sale was a *bona fide* transaction, and had concealed from the Government the fact that either of them had any interest in the matter. The facts thus set out quite at length were evidently

intended as a plea of estoppel. (Rec. p. 24 and 29.) A transcript of the testimony here referred to, and on which the charge of misrepresentations and concealment was based, was filed as an exhibit with the pleading. (The testimony of Shotwell is shown in this record on pages 34 to 51 ; and the testimony of Walker on page 51.)

To this amendment Mrs. Walker and Shotwell's administrator each demurred. The Court sustained the demurer. Briggs declined to plead further ; and a judgment was entered against Briggs as executor, in favor of Mrs. Walker and Shotwell's administrator
2 for separate amounts equal to proportions of the sum in his hands, according to the terms of the agreement of April 18, 1862.

From this judgment an appeal to the Court of Appeals was taken, where it was subsequently affirmed. (Rec. p. 77.) An opinion of the Court of Appeals showing the grounds of the affirmance was filed and is part of this record (p. 77).

1. As to the plea of estoppel—the facts upon which the claim of estoppel was based being shown by the exhibits filed with the petition—the court held that there was no estoppel ; that the statements made by Walker and Shotwell were all true, with the exception possibly of one statement by Shotwell; but that this was immaterial and did not deceive or defraud the Government.

2. As to Briggs' claim that the act of Congress, when properly construed only allowed him to prove and recover an amount equal to the sums due from Morehead to Briggs, and that he was allowed nothing on account of anything due from Morehead to Walker or Shotwell, the Court *conceded this to be the proper construction of the act.* But the Court held that this did not impress on the money received by Briggs "an exemption from Briggs' obligations."

3. As to the suggestion that the Government had waived the statute of limitations in favor of Briggs, the Court conceded this; but called attention to the fact that the allowance to Briggs was "certainly not a gratuity;" for he was required by the act to establish his claim by proof and have it determined in a court, it being furthermore expressly provided in the act that he should not be paid out of the general funds in the Treasury, but only out of the sales of cotton by Captain Fort, with which the claimant's cotton had been intermingled, and then only in the proportion which his cotton bore to the net proceeds of the Fort sales.

In other words the Court, after disposing of the plea of estoppel, and coming to the construction of the act of Congress, conceded the executor's construction to the effect that he was only allowed to recover from the Government the amount due from Morehead to Briggs, and nothing on account of any amounts due from Morehead to either Walker or Shotwell ; and further conceded that the act was an act of grace in the sense of being a waiver of the plea of limitation ; but called attention to the fact that it was not a gratuitous gift of this money to Briggs, but was

a direct recovery on his part of this money as the *proceeds of sale of the cotton* referred to in the bill of sale from Morehead to Briggs, which was the same cotton as that referred to in the contract between Briggs and Walker; and therefore held that, *by the terms of this contract* between Briggs and Walker, Briggs was bound to pay to Walker and to Shotwell's administrator amounts equal to such proportions of the proceeds of sale thus recovered as were fixed by the terms of the contract. (See opinion of Court of Appeals, Rec. 77, 81).

The executor now seeks by this writ of error to reverse this judgment. And the defendants in error have moved to dismiss the writ for want of jurisdiction in the court, and have coupled with this a motion to affirm.

MOTION TO DISMISS.

We are not able to perceive any Federal question involved in this record.

Of course the decision of the Court on the *question of estoppel*, holding that the statements objected to were substantially true, and that no one was deceived thereby, and hence no estoppel raised, does not involve a Federal question.

Then as to the construction of the act of Congress there can be no doubt as to what the true construction is, and the *court conceded the construction contended for by the plaintiff in error.* He claimed in his answer that he was only allowed under that act to recover an amount equal to the debts due from Morehead to Briggs. And the court conceded this construction to be correct.

Again, he claimed that the act was an act of grace in waving the plea of limitations; and the *court conceded this.*

It is true the court held that this was *not a gratuity*, but that what he recovered was on account of the *proceeds of sale of his cotton*, after having judicially established his title by showing the *bona fides* of the bill of sale, and being limited in recovery to the fund realized by the Government from the sale of this cotton and other cotton with which it had been commingled. *But Briggs made no claim by his pleading which was in contravention of this holding by the Court of Appeals.* He did not claim in his pleading that this money had been given to him without consideration by the Government. On the contrary after setting up the act of Congress he says that *in pursuance of that act* he "instituted an action against the United States in the Court of Claims *to recover the proceeds of sale of the cotton aforesaid;*" and that in that action it was adjudged that the assignment from Morehead to his testator was *bona fide* and that he recovered only such sum as was directly owing from Morehead to his testator. And again in the same connection, in speaking of the passage of the act of Congress, he

says it was an act of grace "to permit this defendant *to assert a claim against the proceeds of said cotton*, to the extent that said Morehead was indebted to his testator." (Rec. p. 26.)

Thus it will be seen that the Court of Appeals did not decide against Briggs any question presented by him, *which depended upon the construction of the act of Congress.*

It is true the court held that Briggs was liable to pay this money to Walker and to Shotwell's administrator, which liability Briggs denied; but this conclusion by the court was *based upon the contract between Briggs and Walker*, and was not in any particular based upon a construction of the act of Congress different from that put upon it by Briggs. He did not deny, but expressly alleged, that he had sued for and recovered this money as part of the proceeds of sale of this cotton; and this being true, the court simply held, *as a matter of construction of the contract between him and Walker*, that he was bound by the terms of that contract to pay to Mrs. Walker and to Shotwell's administrator the amounts for which the judgment was entered.

Surely there was no federal question involved in this decision.

We suppose it will not be claimed that this money is exempt from the payment of Briggs' obligations, simply because it was received from the United States Government. Certainly no such exemption was "specially set up or claimed" in the pleading of the executor, as was necessary if he meant to make such point. (Oxley Stave Co. vs. Butler County, 166 U. S. 648, 654.) As heretofore said, the claims of both Mrs. Walker and Shotwell's administrator were based solely on the *personal obligation of Briggs*, evidenced by the contract of April 18, 1862, and in no manner upon the act of Congress, and the same is true of the judgment of the Court of Appeals of Kentucky.

We observe that the petition for rehearing by the executor in the Court of Appeals is printed in this record. But if it be intended thereby to show that some federal question was presented, which was decided against the executor, it is sufficient to say that this court has decided in many cases that a federal question cannot be thus raised. (Loeber vs. Schroeder, 149 U. S., 585.)

MOTION TO AFFIRM.

If on any theory it be determined that a federal question was presented of which this Court has jurisdiction, then we submit that the decision of the Court was so manifestly correct that the judgment should be affirmed, without argument.

As to the claim of estoppel, plainly no one was misled. And if it could be claimed that the Government was deceived, this would constitute no defense for Briggs, as was expressly held by this Court in an exactly similar case in Hobbs vs. McLean, 117 U. S. 580.

And on the other question, in as much as the act of Congress itself shows, and as Briggs himself in effect concedes, that the amount recovered by him was *on account of the proceeds of sale of the cotton transferred from Morehead to Briggs*, and which was the cotton referred to in the contract between Briggs and Walker, we do not see how the Court could avoid concluding that he was bound to pay, under his contract with Walker, whereby he bound himself absolutely as follows:

"*I hereby assume and agree to pay to Samuel J. Walker the sum of $40,000.* due and owing to said Walker by C. S. Morehead, upon condition, however, that I realize sufficient amount from any cotton on or from said plantations, *or proceeds of same*, together with about $25,000 due me from said C. S. Morehead for moneys advanced and liability for him as surety, *also about $10,000 more or less, being a claim of A. L. Shotwell*, as he may hereafter establish against said C. S. Morehead, *but in case I should not realize sufficient to pay all said claims or amounts above named in full*, then I am to pay or divide the amount that may be *realized from said cotton* proportionately or pro rata, according to the respective amounts named to the parties above named." (Rec., p. 5).

CONCLUSION.

We therefore respectfully submit that the writ of error should be dismissed *with damages*, or, if not dismissed, that the judgment of the Court of Appeals should be affirmed with interest and *damages*, as provided in rule 23 of this Court.

Respectfully submitted,

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HELM BRUCE,
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SAMUEL B. VANCE,
Counsel for Ohio Valley Banking & Trust Co., Administrator of Shotwell.

CHAS. M. WALKER,
Of Counsel for Walker.

WM. B. DIXON,
Of Counsel for Shotwell's Adm'r.

ADDENDUM.

We have just been referred by plaintiff in error to the cases of Blagge vs. Balch, 162 U. S. 439, and the line of cases therein cited, which we had not heretofore read.

The case at bar is wholly different from the cases cited. The contention now made *in this court*, seeking to get in line with those cases, seems to be that the money received from the United States by Jas. A. Briggs, who is the executor of the will of Charles M. Briggs (the owner of the cotton), was not really recovered *as part of the estate of Charles M. Briggs*, and that it never became part thereof, but was received as a gift for the benefit of the "heirs," or "distributees," or "next of kin," &c., of Charles M. Briggs. In other words, according to the contention in this court, if there are to-day any unsatisfied creditors of the estate of Charles M. Briggs (leaving defendants in error out of view), they will have no right to be paid out of this money; for, according to this contention, it does not belong to the estate of Charles M. Briggs, but belongs to some sons or daughters, or grandsons or granddaughters, or brothers or sisters, or nieces or nephews, &c., of Charles M. Briggs.

Certainly no such title or right was ever "specially set up or claimed" in the State court. Everything in the record contradicts such a claim. For all that appears in this record, there may be no kin of Charles M. Briggs in existence. Certainly none such appear from this record to be claiming the fund. The pleading of plaintiff in error says the act of Congress relied on was entitled "An Act for the relief of *the estate* of Charles M. Briggs deceased," and shows that in the body of the act the claim is spoken of as "the claim of the legal representatives of Charles M. Briggs, deceased" (Rec. 25.) In every pleading filed by the plaintiff in error he styles himself "James A. Briggs, executor of the will of Charles M. Briggs." He nowhere says there is any particular person who is entitled to this money. The whole record shows that he claims the fund simply as the personal representative of Charles M. Briggs, deceased, as part of his *general estate*, which he says he as executor "*recovered*" "in an *action* against the United States" (Rec. 26).

We insist, therefore, that there is no question presented in this record of which this court has jurisdiction.

But if such a claim as is now made had been made in the State Court, we insist, in the light of Blagge vs. Balch, 162 U. S. 439, that it is too plain to need further argument, that the act of Congress was never understood or intended to make a *gift* to any one; that it simply recognized that the government had in its treasury, in a special account, the actual proceeds of sale of cotton which had been forcibly seized and sold, and which had belonged to Charles M. Briggs (as he claimed). And therefore the act was passed for the benefit of his "*estate*"—not for the benefit of his "heirs" or "next of kin"—allowing his "legal representatives" to sue "for the proceeds of four hundred and fifty-five bales of cotton, now in the Treasury of the United States." And pursuant to this permission, *his executor*—not his children, or kin, but his executor—sued and, *after proving the title of his testator*, as required by the act, "recovered" the proceeds referred to.

The plea of limitation, it is true, was waived, but was waived in favor of "the estate" of Charles M. Briggs. And that the waiver of such a plea does not convert the payment of an honest debt into a gratuity is surely too well settled to need argument. If this had been a mere *gift*, there would have been no occasion for waiving, or in any wise referring to, the "statute of limitations." That statute deals with "demands," not "gifts."

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Counsel for Shotwell's Adm'r.

I have seen this "Addendum," and consent that it may be filed.

CHARLES H. GIBSON,
Of Counsel for Plaintiff in error.